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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of the Commission's  
Rules to Establish New Personal  
Communications Services

)  
)  
) GEN Docket No. 90-314  
) ET Docket No. 92-100

)  
) RM-7140, RM-7175, RM-7617,  
) RM-7618, RM-7760, RM-7782,  
) RM-7860, RM-7977, RM-7978,  
) RM-7979, RM-7980,  
)

) PP-35 through PP-40,  
) PP-79 through PP-85

To: The Commission

COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

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### SUMMARY

As a leading provider of advanced cellular communications services in numerous markets throughout the country, Vanguard Cellular Systems, Inc. ("Vanguard") supports the Commission's efforts to establish a regulatory framework that will ensure a rich diversity of affordable personal communications services ("PCS").

Vanguard concurs with the Commission's conclusion that maximizing the number of PCS providers in each market would promote the prompt delivery of a diverse array of high quality and affordable PCS services. To ensure that these goals are met, Vanguard recommends that the Commission license five providers in each PCS market.

Vanguard fully supports the Commission's position that each PCS licensee should receive an amount of spectrum that is comparable to the 25 MHz currently assigned to cellular licensees. Vanguard also concurs that service and technical restrictions currently applicable to cellular operations mean that 20 MHz of PCS spectrum is essentially equivalent to 25 MHz of cellular spectrum. For these reasons, Vanguard recommends that the Commission allocate 20 MHz of spectrum to each PCS provider.

As the operator of 21 cellular systems consisting of approximately 100 interconnected cell sites, Vanguard relies heavily on 2 GHz microwave networks for reliable and

cost-effective delivery of cellular traffic among these cell sites, system MTSOs and the landline network. The relocation of cellular carriers' fixed microwave systems must be accomplished in a manner that does not jeopardize the integrity of these critical networks or increase the cost of cellular service.

Vanguard disagrees with the Commission's tentative conclusion that PCS service areas should be larger than the MSA and RSA markets used in cellular licensing. MSA and RSA market areas have been carefully analyzed and adjusted by the Commission and the telecommunications industry and have been successfully employed in the implementation of a nationwide cellular network. Conversely, the boundaries of the larger market alternatives suggested by the Commission would almost certainly require adjustment to reflect economic and demographic conditions, and even then may not bear any reasonable relationship to natural PCS markets. Using MSA and RSA markets would also promote participation by qualified firms of all sizes, which would enhance the diversity of PCS.

As the Commission has properly recognized, realizing the full potential of new telecommunications services requires efficient interconnection with the public switched network at reasonable and non-discriminatory rates. On the basis of its own experience in seeking PSTN

interconnection arrangements for its cellular systems, Vanguard is concerned that LECs will pursue discriminatory and otherwise anti-competitive interconnection practices if permitted to hold PCS authorizations in their local wireline exchange areas. The only way to ensure that LECs do not inhibit the development of PCS is to prohibit them from holding PCS licenses in these areas.

Both A Block and B Block cellular carriers should be eligible and encouraged to hold PCS licenses in any market, including markets in which they provide cellular service. Otherwise, the fledgling PCS industry would be denied the substantial economies afforded by the existing cellular network. Moreover, there is no indication that cellular carriers would not seek to complement their existing service by fully exploiting their PCS franchises.

The Commission should make sure that there is a level playing field for cellular-PCS competition by creating a common environment for the two services. In order to do so, the Commission should liberalize the technical requirements for cellular operators, adopt renewal standards for PCS that parallel those for cellular and classify both cellular and PCS under the same regulatory rubric.

Of the three PCS licensing mechanisms contemplated by the Commission, Vanguard believes that competitive bidding best serves the Commission's goals of expediting the

licensing process, reducing administrative burdens, and minimizing the filing of purely speculative applications. In the absence of competitive bidding authority, however, Vanguard recommends that the Commission utilize lotteries rather than comparative hearings for the selection of PCS licensees. The number of applications filed for authorizations in the cellular RSA and 220 MHz private land mobile services demonstrate that the Commission must adopt even more stringent application requirements to minimize the filing of merely speculative PCS applications. In this regard, Vanguard recommends that the Commission require PCS applicants to meet strict financial requirements, adopt a stringent anti-trafficking rule and prohibit interests in more than one application for each PCS market (except for certain interests in publicly held companies).

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To: The Commission

**COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.**

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits these comments on the Federal Communications Commission's (the "Commission" or "FCC") above-referenced Notice of Proposed Rule Making and Tentative Decision regarding the establishment of rules for new Personal Communications Services ("PCS").<sup>1/</sup>

**I. INTRODUCTION.**

Vanguard is among the nation's leading providers of high quality and affordable cellular communications services. An early provider of cellular service in MSA markets, Vanguard has become the third largest operator of purely non-wireline cellular systems in the country. The

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<sup>1/</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, Notice of Proposed Rule Making and Tentative Decision, 7 FCC Rcd 5676 (1992) (the "Notice").



company owns and operates cellular systems serving 18 MSAs and 3 RSAs and holds minority interests in 80 other cellular systems. Vanguard's cellular systems cover a geographic area containing more than 6.1 million people and provide service to more than 90,000 subscribers with approximately 100 cell sites. Vanguard also operates extensive microwave networks consisting of more than 100 hops that serve as the backbone for Vanguard's five regional cellular systems.

Vanguard has been a public-owned company since 1988 and currently has a market capitalization of nearly \$650 million. In 1991, Vanguard's revenues exceeded \$64 million, a 52% increase over 1990 revenues. Along with McCaw Cellular Communications, Inc. and Southwestern Bell Mobile Systems, Inc., Vanguard owns the Cellular One® servicemark which is licensed to A Block cellular carriers throughout the nation.

In developing its cellular networks and in its efforts on behalf of the Cellular Telecommunications Industry Association ("CTIA"), Vanguard has made a substantial contribution to the goal of providing the public with a ubiquitous, nationwide network of personal communications services. Vanguard's President, Haynes G. Griffin, is a former Chairman and Member of the Executive Committee of CTIA and is a member of the CTIA Board of Directors.

II. AWARDING FIVE PCS LICENSES FOR EACH MARKET AREA  
WOULD BEST PROMOTE THE FCC'S LICENSING OBJECTIVES.

Vanguard concurs with the Commission's conclusion that maximizing the number of PCS providers in each market would promote the prompt delivery of a diverse array of high quality and affordable PCS services.<sup>2/</sup> To ensure that these fundamental goals are met, Vanguard recommends that the Commission license five providers in each PCS market.

Vanguard's own experience in its cellular markets confirms the benefits of licensing multiple PCS providers. In each of its cellular markets, Vanguard faces vigorous competition not only from the wireline cellular carrier but also from paging, SMR and other mobile communications providers. In Vanguard's experience, such competition has contributed substantially to the diversity, quality and affordability of the services Vanguard provides to its customers. For example, the high level of competition among several providers has caused Vanguard to increase the productivity and efficiency of its operations which, in turn, has improved the company's overall financial condition. In fact, Vanguard has found that the entry of new providers and the introduction of new services in its markets helps to stimulate overall demand and, in many

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2/ Notice at 5690.

cases, increases rather than decreases Vanguard's market share.

In addition to maximizing price and quality competition, a PCS market consisting of five competing providers would stimulate the prompt delivery of service as the licensees strive to be the first to begin service. Moreover, a highly competitive marketplace would force each PCS provider to expand its service area as expeditiously as possible to match demand. The proven benefits of rigorous competition among multiple providers in the existing mobile communications marketplace suggest that the Commission's ambitious goals for PCS would be best served by licensing five providers in each market.

The arguments for a five-provider framework are even more compelling in view of the wide assortment of services that are expected to be provided by PCS. The Commission's experience in granting more than 150 PCS experimental authorizations in the past three years underscores the promising diversity of PCS. As the Commission recognized, some of the many services contemplated within PCS include CT-2, CT-2 Plus, CT-3, PCN, Wireless PBX, and Wireless Local loop.<sup>3/</sup> The recent pace of technological advances in the telecommunications industry promises that the list of PCS services will only increase over the next few years. By

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3/ Notice at 5684.

licensing five PCS providers in each market, the Commission would ensure that each of these specialized and distinct services would be fully developed and effectively marketed.

In addition, licensing five PCS providers in each market will further stimulate the telecommunications industry's already substantial investment in the early stages of PCS development. By maximizing the number of PCS authorizations that are available to qualified applicants, the Commission would encourage potential providers to redouble their efforts in testing and developing new technologies and services. The prospect of competing against four other PCS licensees would also cause these companies to pursue unique and innovative services that would distinguish them from the other providers. For these reasons, Vanguard submits that licensing five PCS providers in each market would ensure the prompt delivery of service, rigorous price and quality competition and the development of a wide range of distinct and innovative communications services.

**III. A 20 MHZ PCS SPECTRUM ASSIGNMENT FOR EACH PROVIDER  
WILL ACCOMMODATE ANTICIPATED DEMAND AND ENSURE A  
PROPERLY BALANCED MOBILE COMMUNICATIONS MARKET.**

Vanguard fully supports the Commission's position that each PCS licensee should receive an amount of spectrum that is comparable to the 25 MHz currently assigned to cellular

licensees.<sup>4/</sup> Vanguard also concurs that service and technical restrictions currently applicable to cellular operations mean that 20 MHz of PCS spectrum is essentially equivalent to 25 MHz of cellular spectrum.<sup>5/</sup> For these reasons, Vanguard recommends that the Commission allocate 20 MHz of spectrum to each PCS provider.

Although the Commission revised its rules in 1988 to give cellular licensees the option to utilize more spectrally-efficient digital technology, the implementation of such technology remains secondary to providing conventional analog service.<sup>6/</sup> Under this restriction, a cellular licensee must continue to dedicate a portion of its network to the provision of analog service. Consistent with this obligation, Vanguard intends initially to convert to digital operation only those voice channels at each cell site that are necessary to provide service to users of digital cellular telephones. Thus, a substantial portion of cellular carriers' networks will continue to be dedicated to the less spectrally-efficient analog technology. Vanguard expects that for most cellular carriers the need to provide a significant level of analog service will continue for the next several years. Since PCS licensees would not be

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4/ Notice at 5691.

5/ Notice at 5691.

6/ 47 C.F.R. § 22.930 (1991).

subject to such a restriction, they could provide comparable service with less spectrum.

In addition, the greater opportunity for frequency reuse through the design and configuration of PCS microcells further increases the capacity advantage that PCS has over cellular operations.<sup>7/</sup> If the Commission were to allocate more than 20 MHz to each PCS provider, the additional spectrum would provide PCS licensees with a significant spectrum advantage over cellular providers. Such a result would disserve the Commission's goal of maximizing competition in the mobile communications market.<sup>8/</sup>

IV. THE COMMISSION SHOULD ADOPT A VOLUNTARY  
NEGOTIATION PROCEDURE FOR THE RELOCATION OF  
EXISTING 2 GHZ FIXED MICROWAVE USERS.

As the operator of 21 cellular systems consisting of approximately 100 interconnected cell sites, Vanguard relies heavily on 2 GHz microwave networks for reliable and cost-effective delivery of cellular traffic among these cell sites, system MTSOs and the landline network. Vanguard's

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<sup>7/</sup> See the attached Declaration of Robert Shaw, RF Systems Engineer for Vanguard.

<sup>8/</sup> Vanguard has demonstrated that the Commission's goals for PCS are best served by authorizing five PCS providers in each market. See Section II, supra. If the Commission concludes that a lesser number of PCS licensees is warranted, the spectrum that is not licensed to the additional providers should be set aside as an allocation reserve. Such a reserve could be used to further encourage and accommodate new technologies and services or to alleviate demonstrated capacity constraints faced by existing providers.

microwave backhaul system consists of more than 100 communications links constructed at a cost of approximately \$18 million. The relocation of Vanguard's and other cellular carriers' fixed microwave systems must be accomplished in a manner that does not jeopardize the integrity of these critical networks or increase the cost of cellular service.

Vanguard supports the ten-year voluntary negotiation period proposed in the Notice.<sup>9/</sup> However, because it is impossible at this time to accurately predict the costs, technical obstacles and other issues involved in 2 GHz fixed microwave relocation, the Commission should not impose any restrictions or limitations on the voluntary negotiation process, particularly with respect to a PCS licensee's obligation to pay all costs associated with the relocation. Privately negotiated contractual arrangements that are free from arbitrary regulatory constraints would result in a proper balancing of the interests of PCS providers and fixed microwave users.

Vanguard also agrees that, upon the expiration of the ten-year voluntary negotiation period, a PCS licensee could request involuntary relocation, subject to certain conditions that are required to avoid the interruption or degradation of fixed microwave service. In this regard,

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<sup>9/</sup> Notice at 5695.

Vanguard supports the requirements for involuntary relocation recommended by the Utilities Telecommunications Council and contained in GEN Docket 90-54.<sup>10/</sup> Finally, the policy justifications for adopting a relocation process that minimizes disruption of fixed microwave operations apply equally to common and private carrier systems.

Consequently, whatever relocation rules the Commission decides to adopt, cellular carriers must receive every protection afforded other fixed microwave licensees.

V. LICENSING PCS ON THE BASIS OF MSA AND RSA MARKET AREAS WOULD PROMOTE THE PROMPT DELIVERY OF DIVERSE AND RESPONSIVE PCS SERVICES.

Vanguard disagrees with the Commission's tentative conclusion that PCS service areas should be larger than the MSA and RSA markets used in cellular licensing.<sup>11/</sup> MSA and RSA market areas have been carefully analyzed and adjusted by the Commission and the telecommunications industry and have been successfully employed in the implementation of a nationwide cellular network. Conversely, the boundaries of the larger market alternatives suggested by the Commission would almost certainly require adjustment to reflect economic and demographic conditions, and even then may not bear any reasonable relationship to natural PCS markets. Using MSA and RSA markets would also promote participation

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<sup>10/</sup> See Notice at 5695.

<sup>11/</sup> Notice at 5700.



by qualified firms of all sizes, which would enhance the diversity of PCS.

A. Adjusting PCS Market Boundaries.

In establishing MSA and RSA market boundaries for cellular licensing, the Commission, with the active participation of the telecommunications industry and state regulatory agencies, carefully analyzed the unique economic and demographic conditions of these markets.<sup>12/</sup> In many cases, the Commission redefined markets to enable cellular licensees to respond more effectively and efficiently to demand and specific usage patterns. The Commission would be required to repeat this time-consuming process in the event that Major Trading Areas ("MTAs"), Basic Trading Areas ("BTAs") or LATAs are adopted for PCS licensing.<sup>13/</sup> The sheer size of the larger market areas, particularly MTAs,

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<sup>12/</sup> In configuring RSA markets alone, the Commission received more than 140 proposals to modify the RSA boundaries as initially proposed. Almost all of these proposals requested multiple changes, and several parties requested modifications that affected most of the 412 RSAs. Amendment of the Commission's Rules for Rural Cellular Radio Service, Order on Reconsideration, 2 FCC Rcd. 3366, 3366 (1987).

<sup>13/</sup> Obviously, the Commission could avoid this delay simply by denying interested parties the opportunity to suggest changes to market boundaries. However, this inflexible approach would likely result in many markets that do not accurately reflect PCS usage patterns and relevant demographic factors.

would further complicate and delay the boundary adjustment process.<sup>14/</sup>

B. Allowing the Market to Define PCS Service Areas.

Even after the Commission completes the lengthy and complicated process of adjusting MTA, BTA and LATA boundaries, there is no assurance that the adjusted markets would best reflect telecommunications communities of interest and usage patterns for as yet undefined services. Using the smaller MSA and RSA market areas would avoid the need for making difficult market boundary determinations without an adequate record and would enable the marketplace to respond more effectively to developing demand. By using MSAs and RSAs for PCS licensing, the Commission would allow the telecommunications industry the flexibility to configure PCS markets on a rational basis and thereby provide better and more cost effective service to the public.

C. Promoting Universality and Diversity of Service.

Defining PCS markets on the basis of MSAs and RSAs not only would expedite the delivery of efficient and responsive services, but also would serve the Commission's goals of

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<sup>14/</sup> In its recent action establishing an interactive video and data service ("IVDS"), the Commission specifically recognized the advantage of using familiar, well-established market areas and adopted MSAs and RSAs for IVDS licensing because "these cellular service areas are well known to the communications industry and cover the entire country." Amendment of Parts 0, 1, 2 and 95 of the Commission's Rules to Provide Interactive Video and Data Services, Report and Order, 70 RR 2d 523, 535 (1991).

promoting diversity and universality in PCS. As the Commission has recognized, smaller market areas would encourage broad participation from a wide range of qualified PCS providers.<sup>15/</sup> In fact, Vanguard itself exemplifies the advantage of allowing smaller, qualified firms to participate in PCS. Vanguard was formed in 1984 by a small group of businessmen and other prominent individuals who recognized the promise of cellular technology. In the short period since that time, Vanguard has become the third-largest purely non-wireline cellular service provider in the nation and, in the process, has made a substantial contribution to the growth and development of the cellular industry. Vanguard supports a PCS licensing framework that would promote wide participation by other similarly qualified and dedicated business entrepreneurs.

Licensing PCS on the basis of MSA and RSA markets would also promote the Commission's desire to ensure the universal availability of PCS. The smaller MSA and RSA market areas would encourage licensees to tailor at least a portion of their services to the communications needs of smaller communities. In any of the larger geographic areas proposed by the Commission, service to these communities may be delayed or possibly denied as licensees focus on the more densely populated areas within those larger markets.

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<sup>15/</sup> Notice at 5700.

D. Nationwide Licensing.

Finally, Vanguard opposes ubiquitous nationwide licensing of PCS services. First, ubiquitous nationwide licensing would deprive the public of the demonstrated benefits of meaningful competition among PCS and other telecommunications service providers. Authorizing a limited number of ubiquitous nationwide licensees would also sacrifice the many benefits of broader and more diverse participation, including promoting greater innovation in service and technology. Thus, Vanguard believes that ubiquitous nationwide licensing would not serve the public interest. For the foregoing reasons, Vanguard recommends that the Commission's stated goals for PCS and the public interest would be best served by licensing PCS on the basis of MSA and RSA markets.

VI. THE COMMISSION MUST ENSURE THAT LECS DO NOT INHIBIT THE DEVELOPMENT OF PCS THROUGH DISCRIMINATORY INTERCONNECTION PRACTICES.

As the Commission properly recognized in the Notice, realizing the full potential of new telecommunications services requires efficient interconnection with the public switched network at reasonable and non-discriminatory rates.<sup>16/</sup> This is especially true for a service whose ambitious goal is to provide a wide range of convenient, high quality and affordable communications services to

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<sup>16/</sup> Notice at 5705.

people on the move. To achieve this goal, PCS will rely heavily on advanced intelligent networks that, at least initially, could only be provided by the LECs' public switched networks.

At the same time, the Commission also notes that PCS is likely to be a competitor to local wireline exchange service.<sup>17/</sup> On the basis of its own experience as a non-wireline cellular carrier whose business depends on PSTN interconnection, Vanguard has serious concerns about the Commission's proposal to allow LECs to apply for and acquire PCS licenses in markets in which they provide local wireline exchange service.<sup>18/</sup> Vanguard submits that the record on cellular interconnection demonstrates a substantial probability that a LEC authorized to provide PCS in its local wireline exchange area would seek to discriminate against a PCS competitor seeking interconnection.

Notwithstanding existing obligations imposed on LECs with respect to cellular interconnection, Vanguard has found that certain LECs seek to use their bottleneck control over the PSTN to the detriment of non-wireline cellular carriers. This is particularly evident in a case which is well-known in the cellular industry involving New England Telephone

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<sup>17/</sup> Id.

<sup>18/</sup> Vanguard does not object to LECs holding PCS licenses in markets in which they do not provide local exchange service.

("NET"). When the non-wireline systems serving the Portland, Maine and Portsmouth, New Hampshire/Maine NECMAs commenced operations, NET demanded an interconnection charge of 27 cents per minute. Vanguard possesses information indicating that NET's incremental cost for cellular interconnection is 1.2 cents per minute. When the Maine Public Utility Commission staff intervened, NET agreed to reduce its charge to 11.5 cents per minute pending the parties' execution of a permanent interconnection agreement. Although the Maine PUC staff has urged NET to negotiate a permanent agreement that reflects a cost-based interconnection charge, NET continues to refuse to do so. Vanguard's ongoing interconnection dispute with NET is but one example of the propensity of certain LECs to discriminate against non-wireline carriers seeking interconnection. Based on this record, Vanguard believes that any safeguards adopted by the Commission would not effectively eliminate these discriminatory and otherwise anti-competitive practices. Consequently, the only means to ensure that LECs do not inhibit the development of PCS through discriminatory and otherwise anti-competitive interconnection practices is to prohibit LECs from applying for or acquiring PCS licenses in their local exchange areas.

VII. THE COMMISSION SHOULD PERMIT AND ENCOURAGE  
CELLULAR CARRIERS TO HOLD PCS LICENSES FOR MARKETS  
IN WHICH THEY PROVIDE CELLULAR SERVICE.

Both A Block and B Block cellular carriers should be eligible and encouraged to hold PCS licenses in any market, including markets in which they provide cellular service.<sup>19/</sup> Otherwise, the fledgling PCS industry would be denied the substantial economies afforded by the existing cellular network. Moreover, there is no indication that cellular carriers would not seek to complement their existing service by fully exploiting their PCS franchises. If, notwithstanding these arguments, the Commission concludes that cellular providers shall not be eligible to hold PCS licenses in their cellular market areas, the Commission must adopt appropriate ownership thresholds that permit de minimis cellular and PCS cross-ownership interests.

A. The Application of Cellular Economies.

As of last September, the nation's 1483 cellular systems were providing service to 8.9 million subscribers. Cumulative capital investment totalled \$9.3 billion, and the nationwide cellular infrastructure included 8901 cell sites. Most significantly, each of the country's 734 cellular markets was receiving service from at least one cellular

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<sup>19/</sup> However, as indicated in Section VI, supra, a B Block carrier affiliated with a company that provides wireline local exchange service in the PCS market should be prohibited from holding a PCS authorization for that market.

carrier.<sup>20/</sup> By failing to permit cellular licensees to utilize these existing and ubiquitous wireless networks in the development of 2 GHz PCS systems, the Commission could jeopardize the prompt delivery of affordable, diverse and universal PCS services. Existing cellular operations offer numerous technical, marketing and other economies that would promote the rapid deployment of PCS and achieve significant savings in construction and operating costs. For example, a cellular licensee could save substantial amounts in site acquisition costs alone by co-locating PCS microcells with existing cell sites. Additional efficiencies would be available if cellular licensees were permitted to share their substantial technical and marketing resources between PCS and cellular operations in the same market.

The Commission should not forsake these obvious economic advantages out of an unfounded anti-competitive concern. There simply is no evidence that a cellular licensee would not develop to the fullest extent possible PCS spectrum acquired in its existing cellular market areas, particularly in a licensing framework that includes five competing PCS providers as suggested by Vanguard in these Comments. To the contrary, the Commission could expect

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<sup>20/</sup> Press Release, Cellular Telecommunications Industry Association, September 8, 1992.



cellular licensees to utilize PCS spectrum in their markets to complement their existing service offerings. As Vanguard has shown in these Comments, there is substantial competition in today's telecommunications markets, not only between competing cellular carriers but also among the cellular industry and other services such as SMR, paging and even mobile satellite providers.<sup>21/</sup> In this multiple provider environment, Vanguard submits that allowing cellular carriers to hold PCS licenses in their existing market areas would not dilute the competitive benefits of licensing PCS.

B. Cross-Ownership Thresholds.

If, notwithstanding these arguments, the Commission elects to impose a cellular eligibility restriction, then it must also adopt appropriate ownership thresholds that take into account de minimis cross-ownership interests. In this regard, Vanguard generally supports the "benchmark" options advanced by American Personal Communications ("APC") in its September 17, 1992 letter to Chairman Sikes.<sup>22/</sup> In addition to the 21 cellular systems which it wholly-owns or controls, Vanguard has minority interests in 80 other cellular systems ranging from less than 1 percent to approximately 17

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<sup>21/</sup> See Section II, supra.

<sup>22/</sup> Vanguard does not, however, support APC's proposal to license PCS on the basis of MTAs. See Section V, supra.